

Appl. No. : 09/144,897
Filed : September 1, 1998

MASIMO.7CP1C4

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Mohamed K. Diab et al.
Appl. No. : 09/144,897
Filed : September 1, 1998
For : SIGNAL PROCESSING
APPARATUS
Examiner : Eric F. Winakur
Group Art Unit : 3768

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June 30, 2008

(Date)

John M. Grover, Reg. No. 42,610

**SUPPLEMENTAL PETITION UNDER 37 C.F.R. §1.181 FOR CORRECTION OF
PATENT TERM EXTENSION**

Mail Stop Petitions

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 C.F.R §§ 1.701(a)(1) and 1.701(c)(1)(i) and pursuant to 35 U.S.C. § 154(b), Applicants hereby Petition the Director under 37 C.F.R §1.181 to correct the patent term extension for the present application. (See MPEP § 2720.)

Patent Term Extension of U.S. Patent No. 7,376,453

The present application issued on May 20, 2008 as U.S. Patent No. 7,376,453 with an indicated patent term extension under 35 U.S.C. § 154(b) of 130 days. The present application was subject to an interference proceeding under 35 U.S.C. § 135(a), which delayed issuance. Applicants submit that the indicated patent term extension of 130 days is incorrect because this amount reflects only the amount of delay from the date of the declaration of the Interference to the date of favorable judgment for Applicants. As set forth below, Applicants submit that the indicated 130 days does not account for the entire delay due to interference proceedings under 37 C.F.R. § 1.701. The entire delay should also include the delay from the date of favorable judgment until the date the application was dispatched from the Board of

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Patent Appeals and Interferences ("BPAI") to the Technology Center for Examiner review. Additionally, the entire delay should include delay due to Examiner initiated suspensions due to interference proceedings.

The Applicants Agree that the Patent Term Extension Should Include the Indicated 130 Patent Term Extension Reflects the Delay from the Declaration of Interference to Favorable Judgment

Interference No. 105,472 ("the Interference") was declared involving the present application on July 18, 2006. As evidence of the declaration of interference and the date thereof, Applicants provide herewith **Exhibit A**, which is a copy of the declaration of interference and notice thereof ("Notice and Declaration of Interference"), which were mailed to Applicants on July 18, 2006. The Notice and Declaration of Interference can be found on the Patent Application Information Retrieval system of the USPTO website ("PAIR"), labeled as entry "Miscellaneous Communication to Applicant – No Action Count" and dated July 18, 2006 on the "Image File Wrapper" tab associated with the present application. (See **Exhibit C**.)

Applicants received a favorable judgment for Interference No. 105,472 on November 24, 2006. As evidence of the favorable judgment, Applicants provide herewith **Exhibit B**, which is a copy of the judgment, and which can be found on PAIR and is labeled as entry "Interference Miscellaneous" and dated November 24, 2006 on the "Image File Wrapper" tab associated with the present application.

The present application was filed on November 17, 1998 and thus falls under 37 C.F.R. § 1.701 (pertaining to applications filed between 1995 and 2000). The amount of delay from the date the Interference was declared on July 18, 2006 and the date judgment was entered on November 24, 2006 was 130 days. However, as set forth below, Applicants submit that 130 days does not reflect the entire delay due to the interference under 37 C.F.R. § 1.701.

The Patent Term Extension Should Also Include the 393 Day Delay From the Date of Favorable Judgment to the Date of Dispatch to the Technology Center Under 37 C.F.R. § 1.701(c)(1)(i)

Applicants submit that the patent term extension should be adjusted by at least an additional **393 days** because, following judgment on November 24, 2006, the

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application was not dispatched from the Board of Patent Appeals and Interferences ("BPAI") to the Technology Center for Examiner review until December 21, 2007. As evidence of the date of dispatch to the Examiner, Applicants provide herewith **Exhibit D** and **Exhibit E**, which are copies of the "Patent Term Extension History" tab and the "Transaction History" tab on PAIR and associated with the present application. (See entries labeled "Interference Dispatch to TC" on **Exhibit D** and **Exhibit E**, respectively.)

37 C.F.R. § 1.701 reads, in part:

(a) A patent, other than for designs, issued on an application filed on or after June 8, 1995, is entitled to extension of the patent term if the issuance of the patent was delayed due to:

(1) Interference proceedings under 35 U.S.C. 135(a);

...

(c)(1) The period of delay under paragraph (a)(1) of this section for an application is the sum of the following periods, to the extent that the periods are not overlapping:

(i) With respect to each interference in which the application was involved, the number of days, if any, in the period beginning on the date the interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application;

Thus, 37 C.F.R. § 1.701(c)(1)(i) indicates that the time period for patent extension determination "begin[s] on the date the interference was declared ... and end[s] on the date that the interference was terminated." Applicants submit that the Interference was not "terminated" within the meaning of C.F.R. § 1.701(c)(1)(i) until the date the BPAI dispatched the case to the Technology Center for Examiner Review on December 21, 2007. This is evident in light of the wording of 37 C.F.R. § 701(a)(1) which allows for "extension of patent term if the issuance of the patent was delayed **due to** ... (1) Interference proceedings under 35 U.S.C. § 135(a)." 37 C.F.R. § 701 allows for patent term extension for delay caused by interference proceedings, which includes any delay caused by the BPAI in dispatching the case back to the Technology Center for further Examiner review. Former 35 U.S.C. § 154(b), which serves as the basis for 37 C.F.R. § 701, provides further support for this reading. For example, former 35 U.S.C. § 154(b), reads, in part:

(b) TERM EXTENSION.-

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(1) INTERFERENCE DELAY OR SECRECY ORDERS.-If the issue of an original patent is delayed due to a proceeding under section 135(a) of this title ... the term of the patent shall be extended for the period of delay, but in no case more than 5 years. (See MPEP § 2720.)

Any delay from the time of judgment by the BPAI until the case was dispatched to the Technology Center for Examiner review is a "delay[]" due to a proceeding under section 135(a)," and the patent term extension should be adjusted by at least the requested additional 393 days reflecting this delay.

The Patent Term Extension Should Also Include the 247 Day Delay Due to the Examiner Initiated Suspension of Prosecution Due to Interference Proceedings Under 37 C.F.R. § 1.701(c)(1)(ii)

Applicants submit that the patent term extension should be adjusted by at least an additional **247 days** because of Examiner initiated suspensions due to interference proceedings.

37 C.F.R. § 1.701 reads, in part:

(a) A patent, other than for designs, issued on an application filed on or after June 8, 1995, is entitled to extension of the patent term if the issuance of the patent was delayed due to:

(1) Interference proceedings under 35 U.S.C. 135(a);

...

(c)(1) The period of delay under paragraph (a)(1) of this section for an application is the sum of the following periods, to the extent that the periods are not overlapping:

...

(ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Patent and Trademark Office due to interference proceedings under 35 U.S.C. 135(a) ...

Prosecution of this application was suspended twice by the Examiner due to a potential interference. The first suspension was for a period of six months and began on July 2, 2003. The second suspension was for a period of three months and began on May 16, 2006. As evidence of the suspensions, Applicants provide **Exhibit F** and **Exhibit G**, which are copies of the examiner initiated first and second Letters of Suspension, respectively, and which can be found on the "Image File Wrapper" tab associated with the present application on PAIR labeled as entries "Miscellaneous Action with SSP", dated July 2, 2003, and "Letter of Suspension – Examiner Initiated",

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Filed : **September 1, 1998**

dated May 16, 2006, respectively. Because the application was "suspended by the Patent and Trademark Office due to interference proceedings under 35 U.S.C. 135(a)" per 37 C.F.R. § 1.701(c)(1)(ii), Applicants submit that the patent term extension should be adjusted to reflect the appropriate 247 delay.

Applicants submit that the entire 184 day delay due to the first suspension should be added to the patent term extension. The second suspension overlapped with the amount of delay due to the eventual interference involving the present application and Applicant submits that, under 37 C.F.R. § 1.701(c), the non-overlapping period of 63 days should also be added to the patent term extension. As such, Applicants submit that the requested additional 247 days reflect the cumulative total of the first suspension and the non-overlapping portion of the second suspension, and should be added to the patent term extension.

Summary

Applicants submit that the present application was delayed by at least 393 days in addition to the indicated 130 days due to an interference proceeding in which the application was involved. Moreover, the present application was delayed by 247 days due to suspension of prosecution of the application due to interference proceedings. As such, the Applicants submit that the patent term extension should reflect the cumulative total of 770 days of delay due to interference proceedings pursuant to 37 C.F.R. § 1.701, not the indicated 130 days of delay, and request that the patent term extension be corrected to reflect at least this 770 day amount.

No fee is deemed due under 37 C.F.R § 1.181 as neither 37 C.F.R. § 1.181 nor 37 C.F.R. §1.701 indicate that a fee is due in conjunction with a Petition under 37 C.F.R §1.181. However, in the event that a fee is due, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Appl. No. : 09/144,897
Filed : September 1, 1998

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 30, 2008 _____

By: _____

John M. Grover
Registration No. 42,610
Attorney of Record
Customer No. 20,995
(949) 760-0404

5562593

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Jameson Lee
Telephone: (571) 272-9797
Facsimile: (571) 273-0042

MAILED

JUL 18 2006

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Applicants: Diab et al.
Application No.: 09/144,897
Filed: 09/01/98
For: Signal Processing Apparatus

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,472.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

/ss/ Jameson Lee
JAMESON LEE
Administrative Patent Judge

Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 571-272-9797
Fax: 571-273-0042

Paper 1
Filed:
July 18, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JONATHAN TIEN
Junior Party
(Patent 5,662,105),

v.

MOHAMED K. DIAB, ESMAIEL KIANI-AZRBAY JANY,
IBRAHIM M. ELFADEL, REX J. MCCARTHY,
WALTER M. WEBER and ROBERT A. SMITH
Senior Party
(Application 09/144,897).

Patent Interference No. 105,472
(Technology Center 3700)

MAILED

JUL 18 2006

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

DECLARATION - Bd.R. 203(d)¹

1 **Part A. Declaration of interference**

2 An interference is declared (35 U.S.C. § 135(a)) between the above-identified
3 parties. Details of the application(s), patent (if any), reissue application (if any),
4 count(s) and claims designated as corresponding or as not corresponding to the
5 count(s) appear in Parts E and F of this DECLARATION.

6

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 **Part B. Judge managing the interference**

2 Administrative Patent Judge Jameson Lee has been designated to manage the
3 interference. Bd. R. 104(a).

4 **Part C. Standing order**

5 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this
6 DECLARATION. The STANDING ORDER applies to this interference.

7 **Part D. Initial conference call**

8 A telephone conference call to discuss the interference is set for **2:00 p.m. on**
9 **September 12, 2006** (the Board will initiate the call).

10 No later than **four business days** prior to the conference call, each party shall
11 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204;
12 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

13 A sample schedule for taking action during the motion phase appears as Form 2
14 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to
15 the conference call and to agree on dates for taking action. A typical motion period
16 lasts approximately eight (8) months. Counsel should be prepared to justify any
17 request for a shorter or longer period.

Part E. Identification and order of the parties

Junior Party

Named inventors: Jonathan Tien, Redmond, WA

Involved Patent: 5,662,105, granted September 2, 1997
based on application 08/442,834, filed
May 17, 1995

Title: System and method for the extractment of
physiological signals

Assignee: SpaceLabs Medical, Inc.

Senior Party

Named Inventors: Mohamed K. Diab, Laguna Niguel, CA
Esmail Kiani-Azarbay Jany, Laguna Niguel, CA
Ibrahim M. Elfadel, Laguna Niguel, CA
Rex J. McCarthy, Mission Viejo, CA
Walter M. Weber, Los Angeles, CA
Robert A. Smith, Corona, CA

Involved Application: 09/144,897, filed September 1, 1998

Title: Signal processing apparatus

Assignee: Comerica Bank-California

The senior party is assigned exhibit numbers 1001-1999. The junior party is
assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior party
is responsible for initiating settlement discussions. SO ¶ 126.1.

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Part G. Heading to be used on papers

The following heading must be used on all papers filed in this interference, see

SO ¶ 106.1.1:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JONATHAN TIEN
Junior Party
(Patent 5,662,105),

v.

MOHAMED K. DIAB, ESMAIEL KIANI-AZRBAY JANY,
IBRAHIM M. ELFADEL, REX J. MCCARTHY,
WALTER M. WEBER and ROBERT A. SMITH
Senior Party
(Application 09/144,897).

Patent Interference No. 105,472
(Technology Center 3700)

1 **Part H. Order form for requesting file copies**

- 2 When requesting copies of files, use of SO Form 4 will greatly expedite
3 processing of the request. Please attach a copy of Parts E and F of this
4 DECLARATION with a hand-drawn circle around the patents and applications for which
5 a copy of a file wrapper is requested.

/s/Jameson Lee
Administrative Patent Judge

Enc:

Copy of STANDING ORDER
Copy U.S. Patent 5,662,105
Copy of claims of Application 09/144,897

Revised 3 January 2006

cc (via overnight delivery):

Attorney for TIEN:

Michael J. Donohue
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Irvin, CA 92614

Tel: 949-760-0404

EXHIBIT B

Filed by: Trial Section Merits Panel
Mail Stop INTERFERENCE
Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450
Tel: 571-272-9797 Fax: 571-272-0043

Paper No. 29
Entered: November 24, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JONATHAN TIEN
Junior Party
(Patent 5,662,105)¹

v.

MOHAMED K. DIAB, ESMAIL KIANI-AZRBAY JANY,
IBRAHIM M. ELFADEL, REX J. McCARTHY,
WALTER M. WEBER and ROBERT A. SMITH
Senior Party
(Application 09/144,897)²

Patent Interference No. 105,472

Before LEE, LANE and MOORE, Administrative Patent Judge.

LEE, Administrative Patent Judge.

Judgment – Request for Adverse -- Bd. R. 127(b)

¹ Based on Application 08/442,834, filed May 17, 1995. The real party in interest is SpaceLabs Medical, Inc., SpaceLabs Healthcare, Inc., and OSI Systems, Inc.

² Filed September 1, 1998. The real party in interest is Masimo Corporation and Comerica Bank-California. Accorded the benefit of Application 08/859,837, filed May 16, 1997; Application 08/320,154, filed October 7, 1994; and Application 08/132,812, filed October 6, 1993.

Interference No. 105,472
Tien v. Diab

1 On October 31, 2006, junior party conceded priority and requested entry of adverse
2 judgment with respect to the subject matter of Count 1. (Paper No. 28) In a telephone
3 conference call held on November 14, 2006, counsel for party Tien indicated that Tien is no
4 longer interested in filing a motion for no interference-in-fact and a motion to designate its
5 claims 1-9, 13 and 16 as not corresponding to the count. The request is granted.

6 It is

7 **ORDERED** that judgment on priority as to the subject matter of Count 1 is herein
8 entered against junior party JONATHAN TIEN;

9 **FURTHER ORDERED** that junior party JONATHAN TIEN is not entitled to claims
10 1-20 of its involved Patent No. 5,662,105;

11 **FURTHER ORDERED** that if there is a settlement agreement, the parties should note
12 the requirements of 35 U.S.C. § 135(c) and Bd. Rule 205; and

13 **FURTHER ORDERED** that a copy of this judgment be placed in the respective
14 involved application or patent of the parties.

/ss/ Jameson Lee
JAMESON LEE
Administrative Patent Judge

/ss/ Sally G. Lane
SALLY G. LANE
Administrative Patent Judge

/ss/ James T. Moore
JAMES T. MOORE
Administrative Patent Judge

Interference No. 105,472
Tien v. Diab

By Electronic Transmission:

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EXHIBIT C



United States Patent and Trademark Office

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- ☐ Search Patents & Applications
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09/144,897 SIGNAL PROCESSING APPARATUS
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Available Documents

Mail Room	Date	Document Code	Document Description	Document Category	Page Count
	03-11-2008	1449	List of References cited by applicant and considered by examiner	PRIOR ART	
	01-12-2008	OA.EMAIL	Email Notification	PROSECUTION	
	01-10-2008	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	
	01-10-2008	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	
	01-10-2008	BIB	Bibliographic Data Sheet	PROSECUTION	
	01-10-2008	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	
	01-10-2008	FWCLM	Index of Claims Search information including classification, databases and other search related notes	PROSECUTION	
	01-10-2008	SRFW	Fee Worksheet (PTO-06)	PROSECUTION	
	01-07-2008	WFEE	Examiner's search strategy and results	PROSECUTION	
	12-24-2007	SRNT	Interference Miscellaneous	PROSECUTION	
	11-24-2006	INT.MISC	Miscellaneous Communication to Applicant - No Action Count	PROSECUTION	
	07-18-2006	M327	Petition Decision	PROSECUTION	
	05-16-2006	PETDEC	Letter of Suspension - Examiner Initiated	PROSECUTION	
	05-16-2006	L.SP	List of References cited by applicant and considered by examiner	PRIOR ART	
	05-16-2006	1449	NPL Documents	PRIOR ART	
	03-06-2006	NPL	Artifact sheet indicating an item has been filed which cannot be scanned	PROSECUTION	
	02-24-2006	ARTIFACT			

02-24-2006	PET.SPRE	<u>Petition for review by the Technology Center SPRE.</u>	PROSECUTION
02-21-2006	A.QU	<u>Response after Ex Parte Quayle Action</u>	PROSECUTION
02-21-2006	CLM	<u>Claims Applicant</u>	PROSECUTION
02-21-2006	REM	<u>Arguments/Remarks Made in an Amendment</u>	PROSECUTION
02-21-2006	TRTC	<u>Transmittal to TC Information Disclosure Statement (IDS) Filed</u>	PROSECUTION
02-21-2006	IDS	<u>Information Disclosure Statement (IDS) Filed</u>	PROSECUTION
02-21-2006	NPL	<u>NPL Documents</u>	PRIOR ART
09-19-2005	CTEQ	<u>Ex Parte Quayle Action</u>	PROSECUTION
09-19-2005	1449	<u>List of References cited by applicant and considered by examiner</u>	PRIOR ART
09-19-2005	SRFW	<u>Search information including classification, databases and other search related notes</u>	PROSECUTION
08-31-2005	IDS	<u>Information Disclosure Statement (IDS) Filed</u>	PROSECUTION
08-31-2005	NPL	<u>NPL Documents</u>	PRIOR ART
08-31-2005	NPL	<u>NPL Documents</u>	PRIOR ART
08-31-2005	NPL	<u>NPL Documents</u>	PRIOR ART
08-31-2005	NPL	<u>NPL Documents</u>	PRIOR ART
08-31-2005	NPL	<u>NPL Documents</u>	PRIOR ART
08-31-2005	NPL	<u>NPL Documents</u>	PRIOR ART
07-15-2005	PETDEC	<u>Petition Decision</u>	PROSECUTION
06-17-2005	PET.OP	<u>Petition for review by the Office of Petitions.</u>	PROSECUTION
06-17-2005	LET.	<u>Miscellaneous Incoming Letter Information</u>	PROSECUTION
06-17-2005	IDS	<u>Information Disclosure Statement (IDS) Filed</u>	PROSECUTION
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART
06-03-2005	NPL	<u>NPL Documents</u>	PRIOR ART

[illegible]

[illegible]

[illegible]

06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
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06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
06-02-2005	NPL	NPL Documents	PRIOR ART
02-26-2004	SRNT	Examiner's search strategy and results	PROSECUTION
07-02-2003	CTMS	Miscellaneous Action with SSP Power to Make Copies and/or Inspect Information	PROSECUTION
10-25-2000	PC/I	Disclosure Statement (IDS) Filed	PROSECUTION
11-01-1999	IDS	List of References cited by applicant and considered by examiner	PRIOR ART
11-01-1999	1449	NPL Documents	PRIOR ART
11-01-1999	NPL	Foreign Reference	PRIOR ART
11-01-1999	FOR	Foreign Reference	PRIOR ART
11-01-1999	FOR	Foreign Reference	PRIOR ART
11-01-1999	FOR	Foreign Reference Information	PRIOR ART
10-02-1998	IDS	Disclosure Statement (IDS) Filed	PROSECUTION
10-02-1998	1449	List of References cited by applicant and considered by examiner	PRIOR ART
09-23-1998	NFDR	Notice of Formal Drawings Required	PROSECUTION
09-01-1998	TRNA	Transmittal of New Application	PROSECUTION
09-01-1998	A PE	Preliminary Amendment	PROSECUTION
09-01-1998	CLM	Claims	PROSECUTION
09-01-1998	SPEC	Specification	PROSECUTION
09-01-1998	CLM	Claims	PROSECUTION
09-01-1998	ABST	Abstract	PROSECUTION
09-01-1998	DRW	Drawings-only black and white line drawings	PROSECUTION
09-01-1998	OATH	Oath or Declaration filed	PROSECUTION

09-01-1998	APPENDIX	Appendix to the Specification	PROSECUTION
09-01-1998	BIB	Bibliographic Data Sheet	PROSECUTION
09-01-1998	WFEE	Fee Worksheet (PTO-06)	PROSECUTION
09-01-1998	WFEE	Fee Worksheet (PTO-06)	PROSECUTION
09-01-1998	LET.	Miscellaneous Incoming Letter	PROSECUTION

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Patent Term Extension

Filing or 371(c) Date: 09-01-1998 USPTO Delay (PTO) Delay (days):
 USPTO Adjustment (days): +0 Corrections (APPL) Delay (days):
Explanation Of Calculations Total Patent Term Extension (days):

Patent Term Extension History

Date	Contents Description	PTO(Days)	APPL(I)
01-10-2008	Mail Notice of Allowance		
01-10-2008	Mail Examiner's Amendment		
01-07-2007	Document Verification		
01-07-2008	Notice of Allowance Data Verification Completed		
01-07-2008	Case Docketed to Examiner in GAU		
01-07-2008	Examiner's Amendment Communication		
12-21-2007	Interference dispatch to TC		
11-24-2006	Mail Interference Decision - Favorable		
11-24-2006	Interference Decision on Priority - Favorable	130	
07-18-2006	Declaration of Interference		*
05-15-2006	Interference Communication: Initial Memo Disposal		
05-16-2006	Mail Letter of Suspension		
05-15-2006	Letter of Suspension - Examiner Initiated		
05-16-2006	Mail-Petition Decision - Granted		
02-24-2006	Petition Entered		
03-06-2006	Information Disclosure Statement considered		
02-21-2006	Information Disclosure Statement considered		
08-31-2005	Information Disclosure Statement considered		
05-02-2006	Case Docketed to Examiner in GAU		
03-06-2006	Information Disclosure Statement (IDS) Filed		
03-06-2006	Information Disclosure Statement (IDS) Filed		
03-16-2006	Date Forwarded to Examiner		
03-06-2006	Supplemental Response		
02-21-2006	Information Disclosure Statement (IDS) Filed		
02-21-2006	Information Disclosure Statement (IDS) Filed		
03-14-2006	Date Forwarded to Examiner		
02-21-2006	Response after Ex Parte Quayle Action		
02-21-2006	Request for Extension of Time - Granted		
11-23-2005	Case Docketed to Examiner in GAU		
09-19-2005	Mail Ex Parte Quayle Action (PTOL - 326)		
08-31-2005	Information Disclosure Statement (IDS) Filed		
08-31-2005	Information Disclosure Statement (IDS) Filed		
09-16-2005	Ex Parte Quayle Action		
07-15-2005	Mail-Petition Decision - Granted		
06-17-2005	Petition Entered		
09-08-2004	IFW TSS Processing by Tech Center Complete		
01-08-2004	Date Forwarded to Examiner		

01-08-2004	to Close the A/R Record and Reset the Status for Expired Suspensions.
07-02-2003	Mail Letter of Suspension
06-30-2003	Letter of Suspension - Examiner Initiated
10-25-2000	Power to Make Copies and/or Inspect
11-01-1999	Information Disclosure Statement (IDS) Filed
11-01-1999	Information Disclosure Statement (IDS) Filed
10-02-1998	Information Disclosure Statement (IDS) Filed
10-02-1998	Information Disclosure Statement (IDS) Filed
11-05-1998	Case Docketed to Examiner in GAU
09-01-1998	Preliminary Amendment
09-24-1998	Application Dispatched from OIPE
09-15-1998	IFW Scan & PACR Auto Security Review
09-04-1998	Initial Exam Team nn
06-12-2001	Dummy Standard Action - DO Not DELETE

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Transaction History**Date Transaction Description**

01-13-2008 Electronic Review

01-12-2008 Email Notification

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01-10-2008 Mail Notice of Allowance

01-10-2008 Mail Examiner's Amendment

01-07-2007 Document Verification

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08-31-2005 Information Disclosure Statement considered

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03-06-2006 Information Disclosure Statement (IDS) Filed

03-06-2006 Information Disclosure Statement (IDS) Filed

03-16-2006 Date Forwarded to Examiner

03-06-2006 Supplemental Response

02-21-2006 Information Disclosure Statement (IDS) Filed

02-21-2006 Information Disclosure Statement (IDS) Filed

03-14-2006 Date Forwarded to Examiner

02-21-2006 Response after Ex Parte Quayle Action

02-21-2006 Request for Extension of Time - Granted

11-23-2005 Case Docketed to Examiner in GAU

09-19-2005 Mail Ex Parte Quayle Action (PTOL - 326)

08-31-2005 Information Disclosure Statement (IDS) Filed

08-31-2005 Information Disclosure Statement (IDS) Filed

09-16-2005 Ex Parte Quayle Action

07-15-2005 Mail-Petition Decision - Granted

06-17-2005 Petition Entered

09-08-2004 IFW TSS Processing by Tech Center Complete

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10-02-1998 Information Disclosure Statement (IDS) Filed
11-05-1998 Case Docketed to Examiner in GAU
09-01-1998 Preliminary Amendment
09-24-1998 Application Dispatched from OIPE
09-15-1998 IFW Scan & PACR Auto Security Review
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/144,897

09/01/1998

MOHAMED K. DIAB

MASIMO.7CP1C

5325

20995 7590 07/02/2003

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

WINAKUR, ERIC FRANK

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 07/02/2003

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All claims are allowable. The prior art teaches methods and apparatus for enhancing physiological signals for the measurement of blood oxygen in a subject including irradiating a patient with two wavelengths and detecting light that has passed through the patient, wherein the detected light includes a interference portions. However, the prior art does not teach or suggest a method or apparatus that uses an adaptive signal processor and reference signal generator to process the detected signals and a peak detector to receive an output signal from the adaptive signal processor and determine a calculated value, as set forth in the claims.

However, due to a potential interference, ex parte prosecution is SUSPENDED FOR A PERIOD OF 6 MONTHS from the date of this letter. Upon expiration of the period of suspension, applicant should make an inquiry as to the status of the application.

Attachments: Information Disclosure Statements (PTO-1449) -- Papers 3, 4

Eric F. Winakur
Primary Examiner
Art Unit: 3736

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09/144,897	09/01/1998	MOHAMED K. DIAB	MASIMO.7CPIC	5325

20995 7590 05/16/2006
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EXAMINER

WINAKUR, ERIC FRANK

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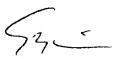
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Attachment: Copies of 1449 from IDS filed 2/21/06 and 2/24/06


Eric F Winakur
Primary Examiner
Art Unit: 3768

KWY
5-15-06